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12-11-2006

# Order (JOHN W. OXENDINE)

Alice D. Bonner

*Superior Court of Fulton County*

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**COPY**

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

**FILED IN OFFICE**

DEC 11 2006

Deputy Clerk Superior Court  
Fulton County, Georgia

JOHN W. OXENDINE,

Plaintiff,

v.

TOTAL LIFE CARE, P.C., et al.,

Defendants,

v.

CAPITAL CITY BANK & TRUST  
COMPANY,

Third-Party Plaintiff,

v.

WILLIAM H. CLEVELAND, M.D., et al.,

Third-Party Defendants,

v.

TOTAL LIFE CARE, P.C., et al.,

Third-Party Plaintiffs,

v.

JOHN G. WHITMORE, et al.,

Third-Party Defendants.

Civil Action No. 2003-CV-98868  
(Division One—ADB)

**ORDER**

This case is before the Court on the Motions for Summary Judgment of Third-Party Defendants John G. Whitmore and EWM Group, P.C. (hereinafter "Third-Party Defendants") against the Third-Party Plaintiffs Total Life Care, P.C., TLC Administrators,

Inc., TLC Management, Inc., and Benjamin E. Woods, M.D. (hereinafter "TLC Plaintiffs") and the Third-Party Plaintiff Iris Johnson (hereinafter "Johnson").

The Third-Party Defendants were hired by the Commissioner of Insurance to examine the Providers Direct Health Plan of Georgia, Inc., ("PDHP") in connection with its initial application to operate as a physician sponsored healthcare corporation, as well as its ongoing compliance with the statutory requirements of such a corporation. TLC Plaintiffs' and Johnson's claims arise from these actions.

In support of its unopposed motion for summary judgment against TLC Plaintiffs, the Third-Party Defendants argue the following: (i) Third-Party Defendants owed no duty of care to the TLC Plaintiffs; (ii) TLC Plaintiffs intentionally misrepresented PDHP's finances to the Third-Party Defendants; (iii) TLC Plaintiffs failed to file an expert affidavit in support of their claim of professional malpractice; (iv) TLC Plaintiffs' claims were filed outside of the four year statute of limitations provided in O.C.G.A. § 9-3-25; and (v) governmental immunity provided under Ga. Const. of 1983, Art. I, Sec. II, Par. IX(d), protected the actions undertaken by Third-Party Defendants. Having carefully considered the evidence and the motion, the Court concludes that Third-Party Defendants' motion for summary judgment as to TLC Plaintiffs' claims should be and is hereby **GRANTED**.

In support of their motion for summary judgment against Johnson, Third-Party Defendants assert the above stated claims and that they never received service of process of Johnson's Third-Party Complaint. As such, and for the reasons stated above, the Court concludes that the Third-Party Defendants' motion for summary judgment as to Johnson should be and is hereby **GRANTED**.

SO ORDERED this 8 day of December, 2006.

Alice D. Bonner  
ALICE D. BONNER, SENIOR JUDGE  
Superior Court of Fulton County  
Atlanta Judicial Circuit

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